Defence (Employer Support Payment Scheme) Determination 2023

made under section 58B of the *Defence Act 1903*

Compilation No. 1

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About this compilation

This compilation

This is a compilation of the *Defence (Employer Support Payment Scheme) Determination 2023* that shows the text of the law as amended and in force on 24/10/2024 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1: Preliminary

Division 1: Introduction

1.1.1 Name

This instrument is the *Defence (Employer Support Payment Scheme) Determination 2023*.

1.1.3 Authority

This instrument is made under section 58B of the *Defence Act 1903*.

1.1.4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Division 2: General

1.1.5 Purpose

The purpose of this Determination is to establish a scheme for providing financial assistance to businesses that employ members of the Reserves who have been absent from their civilian workplace on defence service.

1.1.6 Persons this Determination applies to

This Determination applies to the following persons:

a. An employer of a member of the Reserves who has been absent from the civilian workplace on defence service.

b. A self-employed member of the Reserves who has been absent from their business on defence service.

1.1.7 Forms

If an approved form is specified in relation to any application or request, the applicant or person making the request must complete and submit the approved form in accordance with any instructions on it.

1.1.8 References to rules in other instruments

1. This Determination makes reference to rules in other instruments including the following:

   a. Acts of Parliament.

   b. Provisions of legislative instruments covered by subsection 14(3) of the *Legislation Act 2003.*

   c. Determinations of the Defence Force Remuneration Tribunal made under section 58H of the *Defence Act 1903.*

   d. Determinations made under section 58B of the *Defence Act 1903.*

2. All of the following apply to instruments listed in subsection 1:

   a. If a date is specified — the reference is to the rules that were in force on that date.

   b. If no date is specified — the reference is to the rules that are in force from time to time.

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Part 2: Definitions

2.1.1 Purpose

This Part defines general terms used throughout this Determination.

2.1.2 Definitions

The following definitions apply to this Determination.

Additional support payment means an amount payable under Part 5.

Applicant, means an employer applicant or a member applicant as relevant to an application.

Application means any of the following:

a. An application for a support payment.

b. An application for an extended support payment.

c. An application for an additional support payment.

Approved form means a form approved by the Deputy Head Reserve and Cadet Support Division by notifiable instrument.

Assessment period means a 12 month period nominated by the member applicant that meets one of the following:

a. The period ends 3 months or less before the member commences defence service relating to the claim period.

b. The period ends on a day more than 3 months before the member commences defence service relating to the claim period that the CDF considers reasonable.

Average weekly wage means, for the 12 months commencing on 1 July in the year before an application is made, the amount estimated by the Australian Statistician as the average weekly full-time adult ordinary time earnings for all employees in Australia in November of the preceding year, as published by the Australian Bureau of Statistics.

Business includes any profession, trade, employment, vocation or calling carried out by a company, trust, partnership, sole trader business or other entity but does not include occupation as an employee.

Capability payment rate means a weekly rate of support payment approved by the CDF under Part 3 Division 7.

Casual employee has the same meaning as in section 15A of the *Fair Work Act 2009*.

CDF means the Chief of the Defence Force.

Civil practice support allowance means an allowance payable to a medical officer in the Reserves who volunteers and is assigned for duty with a deployment under Chapter 17 Part 7 Division 2 of *Defence Determination 2016/19, Conditions of service*.

Claim period, means the period during which a member is absent on defence service, in relation to which an application for a support payment, extended support payment or additional support payment is made.

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Company means a body corporate, including an incorporated association, and any other unincorporated association or body of persons but does not include a partnership.

Continuous defence service has the meaning under section 2.1.3.

Continuous full-time service means a period of service when the member is paid an annual rate of salary under *Defence Force Remuneration Tribunal Determination No. 2 of 2017, Salaries*.

Defence Reserve leave means leave, however described, that the employer of a member may grant to a member to render defence service.

Defence service means any of the following:

a. Paid defence service as a member of the Reserves, including undergoing training, except for service in the ADF Gap Year Program known as SERVOP G.

b. Voluntary unpaid defence service in a part of the Reserves rendered by a member who is unable to be paid for that service because they hold a parliamentary, judicial, or statutory position.

Employer applicant means an employer who makes an application for a benefit in relation to an employee who is a member of the Reserves.

Employment arrangement means any of the following under which a person is employed to perform full-time work or part-time work:

a. A workplace instrument, such as an agreement or award, which is made or certified by a Commonwealth or State industrial tribunal.

b. A training contract registered with a State or Territory training authority.

c. A law or contract regulating the appointment or employment of a person under a law of the Commonwealth or of a State or Territory.

d. Another employment agreement that the CDF is satisfied is an agreement to perform full-time work or part-time work.

Extended support payment means an amount payable under Part 4.

Full-time work has the meaning under section 2.1.4.

Income means an amount determined to be income under Part 3 Division 4 Subdivision 2.

Legal officer sessional fee means the payment to which a legal officer who is a member may be eligible for under Chapter 4 Part 9 Division 1 of *Defence Determination 2016/19, Conditions of service*.

Medical officer means a medical officer in the Reserves who is qualified to practise in a medical capacity mentioned in Chapter 17 Part 7 Division 2 of *Defence Determination 2016/19, Conditions of Service*.

Member means a person who is, or has been, a member of the Reserves but does not include a person called upon to serve in the Defence Force under section 60 of the *Defence Act 1903*.

Member applicant means a business that is related to the member which makes an application for a benefit.

National minimum wage means the national minimum wage as set in a national minimum wage order in force under the *Fair Work Act 2009*.

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Notice of a change in circumstances means notice required by section 6.1.3.

Part-time work has the meaning under section 2.1.4.

Principal source of employment has the meaning given in section 3.4.3.

Principal source of income has the meaning given in section 3.4.2.

Registered business means a business that is shown on the Australian Business Register established under section 24 of the *A New Tax System (Australian Business Number) Act 1999*.

Regular casual employee has the same meaning as section 12 of the *Fair Work Act 2009*.

Related has the meaning under section 2.1.5.

Relevant financial loss, in relation to an application for an additional support payment, has the meaning under section 5.3.1.

Review means the review of a reviewable decision under Part 7 Division 2 or 3.

Reviewable decision has the meaning under section 7.1.2.

Support payment means an amount payable under Part 3.

Weekly payment amount, in relation to an application for a support payment, means the rate at which a support payment for a week is calculated, as follows:

a. If no capability payment rate applies to the member concerned when the defence service is rendered — the average weekly wage.

b. If a capability payment rate applies to the member concerned when the defence service is rendered — that capability payment rate.

Note: The following terms used in this Determination are defined elsewhere:

a. The terms Chief of the Defence Force, Reserves and service chief are defined in section 4 of the *Defence Act 1903*.

b. The term month is defined in section 2G of the *Acts Interpretation Act 1901*.

2.1.3 Days that are included in a period of continuous defence service

1. A member completes a **period of continuous defence service** if either of the following occur:

   a. The member renders defence service for a period of at least 5 consecutive days.

   b. The member renders defence service for a rostered shift cycle for a period of 4 consecutive days, and the CDF is satisfied that at least 38 hours of defence service were rendered.

   Note: Continuous defence service includes service rendered on continuous full-time service or reserve service paid on an attendance basis.

2. A period of continuous defence service includes a day on which any of the following applies:

   a. A day when the member would have rendered defence service if not for a public holiday at the location.

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b. The member rendered defence service and the CDF is satisfied that any of the following prevented the member from completing at least 6 hours of service on the day:

i. An illness or injury suffered by the member.

ii. A Defence requirement.

iii. An exceptional circumstance.

c. The member died while on defence service.

d. The member intended to render defence service on the day and the CDF is satisfied that the member was unable to, due to an illness or injury suffered by the member, a family emergency or any other exceptional reason.

e. The member intended to render defence service on a day when their Unit is stood down, in writing, for Unit management reasons or for a reason beyond the Unit's control.

2.1.4 When is a member employed in full-time work, part-time work or is a regular casual employee

1. A member is employed in full-time work or part-time work or as a regular casual employee, if the CDF is satisfied that the average number of hours that the member worked each week during the 3 months before the period of absence due to defence service commenced meets one of the following:

   a. If an employment arrangement specifies the number of hours that are full-time hours each week for the work performed, the following apply:

      i. A member who is in regular paid employment for the specified number of hours or more each week is employed in full-time work.

      ii. A member who is in regular paid employment for less than the specified number of hours each week is employed in part-time work.

   b. If an employment arrangement does not specify the number of hours each week for the work performed, the following apply:

      i. A member who is in regular paid employment, or a regular casual employee, for 38 hours each week or more is employed in full-time work.

      ii. A member who is in regular paid employment, or a regular casual employee, for less than 38 hours each week is employed in part-time work.

2. If a member works in more than one business related to the member, one of the following applies:

   a. If the combined number of hours worked by the member each week is 38 hours or more, the member is employed in full-time work.

   b. If the combined number of hours worked by the member each week is less than 38 hours, the member is employed in part-time work.

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2.1.5 When is a business related to a member

A business is related to a member if any of the following apply:

a. The member is a shareholder or director of a company who is employed to manage the company's business.

b. The member is a beneficiary of a trust who is employed to manage the trust's business.

c. The member is a partner of a business partnership who is not a silent partner.

d. The member is the operator of a sole trader business.

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Part 3: Support payments

Division 1: General

3.1.1 Purpose

1. Support payments provide financial assistance to businesses that employ members of the Reserves who have been absent from their civilian workplace on defence service.

2. This Part provides the following:

    a. How and when an application for a support payment is to be made.

    b. The rules for determining if an applicant can be paid a support payment, including rules about the employment and wages of the member concerned or about the length of their absence on defence service.

    c. How to work out the amount of a support payment.

    d. The maximum amount of support payment that is payable and when it is to be paid.

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Division 2: Applying for support payments

3.2.1 How to apply

1. An applicant must use the approved form to apply for a support payment.

2. In an application made by a member applicant, the applicant must specify one of the following:

   a. An assessment period.

      Note: The assessment period is used to establish the member's principal source of income or principal source of employment under section 3.4.2 and section 3.4.3.

   b. An assessment period which remains valid under subsection 3.4.2.3 or subsection 3.4.3.3.

3. A single application form may be used to apply for a support payment for multiple claim periods relating to a particular member.

4. An application for a support payment may include a request that a payment be made for capabilities approved by the CDF under Part 3 Division 7.

3.2.2 When to apply

1. An application for a support payment must be made within 12 months of the start of the period of absence on defence service to which the application relates, whether or not the period of absence has been completed.

2. Despite subsection 1, an application that is made after that 12 month period may be accepted by the CDF if satisfied that exceptional circumstances justify doing so.

3.2.3 Member applicant with more than one business

If a member is employed in more than one business that is related to the member, an application for only one of the businesses may be submitted for a support payment.

Note: The hours that the member works in all of the related businesses may be combined under subsection 2.1.4.2 for the benefit of the applicant.

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Division 3: When can a support payment be made to an employer applicant

3.3.1 When can a support payment be made to an employer applicant

1. A support payment is payable to an employer applicant if, at the time of a member's absence on defence service, all of the following apply:

    a. The applicant operated a registered business.

    b. The business is trading or otherwise operating.

    c. The member is employed by the business in any of the following capacities:

        i. As an employee under an employment arrangement for which a wage or salary is payable.

        ii. As an apprentice or trainee under a formal training contract.

        iii. As a result of being appointed to or employed by an authority or Department of the Commonwealth or of a State or Territory, including a local government body.

        iv. As a commission agent within the meaning of section 7 of *the Defence Reserve Service (Protection) Act 2001*.

    d. The applicant and member have not entered into an employment arrangement established wholly or substantially for the purpose of the applicant appearing eligible for a payment under this Determination.

    e. The member has been employed by the business for a minimum of 3 months before the start of any period of defence service.

    f. The member is employed by the business as any of the following:

        i. As a full-time employee.

        ii. As a part-time employee.

        iii. As a regular casual employee.

    g. The member is not any of the following:

        i. A contractor within the meaning as in section 7 of the *Defence Reserve Service (Protection) Act 2001*.

        ii. A casual employee.

    h. The member is paid any of the following:

        i. A wage that is at least as much as the national minimum wage.

        ii. A wage in accordance with a salary sacrifice or other arrangement which provides an outcome that is equal to or more favourable than the national minimum wage.

    i. The applicant has granted the member an absence from employment to render a period of continuous defence service.

2. Despite subsection 1, an employer applicant of a member in part-time employment is not eligible for a support payment if the member is employed full-time by another employer.

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3.3.2 Information that must be provided — employer applicant

1. This section applies to an application for a support payment that is the first one made by the employer applicant that relates to that particular member for a period of absence on defence service commencing within the financial year concerned.

2. The application must include the following information:

   a. Evidence that the member is employed by the employer applicant.

   b. Evidence of the member's actual weekly hours of work for the 3-month period immediately before the period of absence due to defence service.

   c. Evidence of the member's salary.

3. An applicant must provide any additional information requested by the CDF in relation to the application within 30 days of the request.

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Division 4: When can a support payment be made to a member applicant
Subdivision 1: General

3.4.1 When can a support payment be made to a member applicant

1. A support payment is payable to a member applicant if, at the time of their absence on defence service, all of the following apply:

    a. The member applicant operates a registered business.

    b. The business is trading or otherwise operating.

    c. The member is employed by the business on any of the following:

        i. In full-time work.

        ii. In part-time work.

    d. The applicant was absent from employment rendering a period of continuous defence service.

    e. One of the following applies:

        i. The member applicant's business provides the member's principal source of income as established under section 3.4.2.

        ii. The applicant's business provides the member's principal source of employment as established under section 3.4.3.

2. Despite subsection 1, a member applicant is not eligible for a support payment if the member is employed full-time by an employer.

3.4.2 Establishing principal source of income

1. A member's principal source of income is the source of income from which the CDF is satisfied the member applicant receives more income from their business than any other source of employment during the assessment period.

2. In deciding the member's principal source of income, the CDF must consider evidence of the member's income during the assessment period.

3. A decision on a member's principal source of income under subsection 1 is valid for 2 years from the last day of the assessment period.

3.4.3 Establishing principal source of employment

1. A member's principal source of employment is the source of employment from which the CDF is satisfied the member has worked the greater amount of time in the applicant's business than in any other type of employment during the assessment period.

2. In deciding the member's principal source of employment, the CDF must consider evidence of the member's employment during the assessment period.

3. A decision on a member's principal source of employment under subsection 1 is valid for one of the following periods:

    a. Two years from the last day of the assessment period.

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b. If the CDF is satisfied that there are exceptional circumstances which prevents the member applicant from establishing the member's principal source of income under section 3.4.2 during the period under paragraph a — 3 years from the last day of the assessment period.

4. A member applicant may only establish their business as the member's principal source of employment once unless the CDF is satisfied there are exceptional reasons which prevent the member applicant from establishing their principal source of income under section 3.4.2.

3.4.4 Information that must be provided — member applicant

1. A member applicant must include the following information in an application relating to the member applicant's assessment period and establishing the member's principal source of income or principal source of employment under subdivision 1:

   a. Evidence that the applicant operated a registered business.

   b. Evidence that the applicant's business was trading or otherwise operating.

   c. Evidence that the business provides the member's principal source of income or principal source of employment, by providing the member's individual tax return and notice of assessment unless one of the following applies:

      i. If the member has lodged an individual tax return but has not yet received the notice of assessment — a copy of the individual tax return only.

      ii. If the member has not yet lodged an individual tax return — a financial statement for the member, certified as accurate by the member's accountant or financial adviser.

2. The following apply to the evidence provided under paragraph 1.c:

   a. If subparagraph 1.c.i applies, the applicant must provide the member's notice of assessment as soon as practicable after it has been issued by the Commissioner of Taxation.

   b. If subparagraph 1.c.ii applies, the applicant must provide the member's individual tax return and the notice of assessment as soon as practicable after it has been issued by the Commissioner of Taxation.

3. If the application is the first one made by the applicant in relation to a member within a financial year, evidence of the member's actual weekly hours of work for the 3-month period immediately before the period of absence due to defence service must be provided.

4. An applicant must provide any additional information requested by the CDF in relation to the application within 30 days of the request.

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Subdivision 2: Working out the income a member applicant receives from a business

3.4.5 Meaning of *income*

1. ***Income*** means the net income for a member and includes, but is not limited to, any of the following:

    a. Subject to section 3.4.6, an amount received from the activities of the business, in the form of earnings, moneys or profits, for the member's own use or benefit.

    b. Salary paid for defence service.

    c. Salary paid under any other employment arrangement.

    d. A non-cash benefit that forms part of a package of remuneration, including any of the following:

        i. Contributions to superannuation made under a salary sacrifice or other arrangement that exceed the amount that would be paid under the *Superannuation Guarantee (Administration) Act 1992*.

        ii. An amount deducted from a member's salary or wages under a salary sacrifice or other arrangement.

2. The following are not counted towards the income for a member:

    a. An amount of pension.

    b. Potential or projected income.

    c. For an application relating to an income year — a profit made, or a loss incurred, in the previous income year.

    d. A capital gain or loss, including a gain or loss relating to any of the following:

        i. The sale of plant, equipment or other property.

        ii. The sale of shares or an investment.

        iii. The sale of a business or a significant part of the business.

        iv. A transaction relating to foreign currency that is treated as a capital gain for taxation purposes.

    e. Depreciation related to a sole trader business.

    f. Any payment made under this Determination unless the CDF is satisfied of any of the following:

        i. There is documentary evidence that the amount was used to address a loss or shortcoming directly caused by the absence of the member on defence service.

        ii. Ownership or control of the business is shared by the member with another person or persons, and there is documentary evidence that the share of a support payment was received by that person or persons and not, either directly or indirectly, by the member.

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3.4.6 When income is received

1. For the purpose of paragraph 3.4.5.1.a, a member receives an amount of income from a business if all of the following apply in relation to an amount:

    a. The amount is not the income, profit, loss, or turnover of the business itself unless it is the profit or loss of a sole trader.

    b. Subject to subsection 2, the amount relates to the activities of the business.

    c. Any additional requirements in this section are met.

2. If the activities of the business involve only the investment of accumulated wealth or investment in a superannuation fund, the related amount is not income.

3. If the member receives an amount from the sale of stocks or assets, the amount is only income received from the business if the stocks or assets were owned by the business.

4. If the member is a director of a company the following apply in relation to income:

    a. The member's income from the company includes any of the following:

        i. An amount from the business that would be declared as personal income in the member's personal tax return.

        ii. Fees, emoluments, and dividends.

    b. The member's income from the company does not include an amount paid as a repayment of a loan.

5. If the member is a trustee of an applicant trust, the member's income from the trust is the amount of distribution of the net income of the trust that would be declared by the member as personal income in the member's personal tax return.

6. If the member is a partner in the applicant partnership, the member's income from the business is the amount of the member's share of the net income or loss from the business that would be required to be shown in the member's personal tax return as a partner's share.

7. If the applicant is a sole trader, the member's income from the business is the amount of net income or loss from the business that would be required to be shown in the member's personal tax return.

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Division 5: Which absences can be counted when determining amount of payment

3.5.1 Working out if an absence can be counted when determining amount of payment

During a period of continuous defence service, the following days can be counted for the purpose of determining the support payment payable to an applicant:

a. A day that the applicant has granted the member any of the following for the purpose of rendering defence service:

   i. Defence Reserve leave.

   ii. Leave without pay.

b. A day that the applicant has granted an absence to render defence service without requiring the member to take some form of leave.

3.5.2 Absences that are not counted when determining payment

The following days of absence on defence service are not to be counted for the purpose of determining the support payment payable to an applicant:

a. A public holiday, unless the member rendered at least 6 hours of defence service on that day.

b. A day of leave not referred to in section 3.5.1.

c. A day when the member performed at least 6 hours of defence service and the CDF is satisfied that the member performed significant work for the applicant's business on the day.

d. A day when the member is stood-down from their employment by the member's employer for the whole day.

e. A day when the member is stood-down from defence service because of their wilful or negligent actions.

f. A day when a legal officer sessional fee was payable to the member.

g. A day when the member did not render agreed defence service.

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Division 6: Working out the amount of support payment

3.6.1 Amount payable where member is employed by one employer

1. If an applicant is eligible for a support payment under section 3.3.1 or section 3.4.1, the amount of the support payment is the sum of the following:

   a. For every 7 day period in a claim period in which the member provided 5 to 7 days of defence service:

   $$support\ payment = A \times B$$

   Where:

   A is the weekly payment amount.

   B is one of the following:

   i. If the member worked full-time: 1.

   ii. If the member worked other than full-time: $\frac{number\ of\ hours\ worked}{38}$.

   b. For every 7 day period in a claim period in which the member provided 1 to 4 days of defence service:

   $$support\ payment = \frac{A}{5} \times B \times C$$

   Where:

   A is the weekly payment amount.

   B is the number of days of defence service.

   C is one of the following:

   i. If the member worked full-time: 1.

   ii. If the member worked other than full-time: $\frac{number\ of\ hours\ worked}{38}$.

   Note: Under section 3.3.1 and 3.4.1 any other business that employs the member is not eligible for a support payment for the same period.

2. In this section the following apply to the 7 day period:

   a. The first 7 day period in a claim period commences on the first day of the member's defence service in the claim period.

   b. For each subsequent 7 day period in a claim period, the 7 days commences 7 days after the previous 7 day period commenced.

   c. If a new claim is made within an existing 7 day period in the previous claim period (the existing period), the following apply:

   i. If the member has worked 1 to 4 days in the existing period, the days worked in the new claim period are counted towards the existing period but must not exceed a total of 7 days in the existing period.

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ii. If the member has worked 5 to 7 days in the existing period the applicant is not eligible for a support payment for the days worked in the new claim period that occur within the existing period.

3.6.2 Amount payable where member is employed by more than one employer

1. This section applies if all of the following apply:

   a. The applicant is eligible for a support payment under section 3.3.1 or section 3.4.1.

   b. The member is employed to work part-time, or as a regular casual employee, by more than one employer.

2. The applicant is eligible for an amount of support payment for every 7 day period in the claim period calculated using the following formula:

$$payment\ amount = A \times \frac{B}{C}$$

   Where:

   A is the weekly payment amount.

   B is the number of hours worked by the member each week for the applicant.

   C is the greater of the following:

      a. The total number of hours worked by the member each week.

      b. 38.

   Note 1: A claim for support payment under this section can be made by more than one applicant for the same period.

   Note 2: A claim for a support payment under this section cannot be made if both applicants are related to the member, see section 3.2.3.

3. In this section the following apply to the 7 day period:

   a. The first 7 day period in a claim period commences on the first day of the member's defence service in the claim period.

   b. For each subsequent 7 day period in a claim period, the 7 days commences 7 days after the previous 7 day period commenced.

   c. If a new claim is made within an existing 7 day period in the previous claim period (the existing period), the following apply:

      i. If the member has worked 1 to 4 days in the existing period, the days worked in the new claim period are counted towards the existing period but must not exceed a total of 7 days in the existing period.

      ii. If the member has worked 5 to 7 days in the existing period the applicant is not eligible for a support payment for the days worked in the new claim period that occur within the existing period.

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3.6.3 Maximum support payments payable

1. The maximum support payment that is payable to an applicant in relation to a member's absence on defence service is as follows:

    a. If the member renders continuous full-time service — 52 weeks of a weekly payment amount in respect of a single period of continuous full-time service.

    b. If the member renders service in the Reserves when force assigned to an Australian Defence Force operation, one of the following:

        i. Fifty-two weeks of a weekly payment amount in any financial year.

        ii. Fifty-two weeks of a weekly payment amount in respect of a single period of continuous full-time service.

    c. In all other circumstances — 10 weeks of a weekly payment amount in any financial year.

2. Despite paragraph 1.c, if the CDF is satisfied a support payment would facilitate the provision of a capability required by the Defence Force that involves a specified member, class or classes of members, the CDF may increase the application limit.

3.6.4 Payment when member has not worked 3 months in the applicant's business

1. This section applies to an applicant who has claimed the support payment in relation to a member's absence on defence service if all of the following apply:

    a. The member has rendered one or more periods of continuous full-time service that total 52 weeks or more within any 2-year period for which the applicant has also received support payments.

    b. The member has not had a break of at least 3 months between periods of continuous full-time service.

2. The applicant is not eligible for any further support payment until the member has spent 3 months working in the applicant's business.

3. Despite subsection 2, the CDF may approve the payment of the support payment to an applicant if all of the following apply:

    a. The member has not spent a period of 3 months working in the applicants business.

    b. The CDF considers the payment is reasonable.

3.6.5 Amount payable – member who is a medical officer

1. This section applies to an applicant who meets all of the following:

    a. They are eligible for a support payment calculated under this Division.

    b. The member that the claim relates to is a medical officer in the Reserves.

    c. Civil practice support allowance is payable to the member during the period of defence service that the claim relates to.

2. The amount of support payment calculated under this Division is reduced by any amount of civil practice support allowance payable in the claim period.

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Division 7: When support payments are made for specified capabilities

3.7.1 Purpose

1. A support payment may be determined under specified conditions if the CDF has approved those conditions as applying to the member, or to members of a class to which the member belongs, because it would facilitate the provision of a capability required by the Defence Force.

2. This Division makes the following provisions about support payments for specified capabilities:

    a. The making of recommendations that the CDF approve support payment be calculated at a specified capability payment rate of payment.

    b. A making of recommendations that the CDF approve payment of a support payment in modified circumstances.

    c. The approval by the CDF of support payments for specified capabilities arising from a recommendation referred to in paragraphs a or b.

    d. The variation or revocation of limits that have been placed on the application of support payments for specified capabilities.

3.7.2 Payment rate for specified capabilities

1. A Service Chief may recommend to the CDF that a support payment be calculated at a specified rate if all of the following are met:

    a. A support payment is payable, or not payable, because a legal officer sessional fee is payable for the defence service of a member.

    b. The support payment at the recommended rate would facilitate the provision of a capability required by the Defence Force that involves a specified member, class, or classes of members.

2. Head Reserve and Cadet Support Division may recommend to the CDF that a support payment be calculated at a specified rate if satisfied that all of the following circumstances exist:

    a. The required capability relates to more than one Service.

    b. A support payment is payable, or not payable, because a legal officer sessional fee is payable for the defence service of a member.

    c. Payment of a support payment at the recommended rate would facilitate the provision of a capability required by the Defence Force that involves a specified member, class, or classes of members.

    d. The Service Chiefs involved with the provision of the capability required by the Defence Force have been consulted and support the recommendation of the payment of a specified rate if an application for a support payment is made in relation to that capability.

3. The CDF may approve a recommendation under subsection 1 or subsection 2, specifying the following:

    a. The approved support payment rate.

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b. The member, or class of members, to which the support payment rate applies.

c. Any conditions, limitations, or restrictions that are specified as being modified, replaced or not applicable, in relation to the member or class of members.

d. Any limits to which the approval of the support payment rate is subject, including limits on the period in which a support payment is payable.

4. The CDF must provide a copy of the approval to the Minister.

3.7.3 Support payment in modified circumstances

1. A Service Chief or Head Reserve and Cadet Support Division may recommend to the CDF that a support payment should be payable in modified circumstances, whether at a weekly payment amount or a specified capability payment rate, if all the following apply:

   a. A condition, limitation or restriction in this Determination that is specified in the recommendation cannot be met or has not been met.

   b. Payment of a recommended support payment would facilitate the provision of a capability required by the Defence Force that involves a specified member, class, or classes of members.

   c. It is possible to administer support payment as if the condition, limitation, or restriction that would otherwise apply did not apply or was modified or replaced in a way specified in the recommendation.

2. The CDF may approve a recommendation under subsection 1, specifying the following:

   a. The approved support payment rate.

   b. The member, or class of members, to which the support payment rate applies.

   c. Any conditions, limitations, or restrictions that are specified as being modified, replaced or not applicable, in relation to the member or class of members.

   d. Any limits to which the approval of the support payment rate is subject, including limits on the period in which a support payment is payable.

3. The CDF must provide a copy of the approval to the Minister.

3.7.4 Change of criteria or limits for specified payment

1. A Service Chief or the Head Reserve and Cadet Support Division may recommend to the CDF that the limits that have been placed on a support payment related to an approval decision under subsection 3.7.2.3 or subsection 3.7.3.2 should be varied or revoked.

2. The recommendation may relate to a past period only if it would be beneficial to any affected applicants.

3. A decision to revoke a limit may do any of the following:

   a. Increase the support payment that is payable.

   b. Decrease the support payment that is payable.

4. The CDF may approve the recommendation under subsection 1, specifying the date of effect for a variation or revocation of any limits placed by the original approval.

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5. The CDF must provide a copy of the approval to change or limit criteria under this section to the Minister.

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Division 8: Finalising applications

3.8.1 Deciding on an application for a support payment

1. After considering an application for a support payment, the CDF must do any of the following:

    a. Accept the application and work out the amount of support payment that is payable.

    b. Refuse the application.

2. If the applicant has permanently ceased to operate or trade after an application for a support payment is made, but before a support payment has been made, the CDF must do any of the following:

    a. Pay an amount for the period which is supported by substantiated evidence.

    b. Refuse the application.

3.8.2 Applicant must be given notice of decision on an application

An applicant for a support payment must, within a reasonable time after the CDF makes a decision on the application, be given written notice of the decision which includes the following:

a. If the decision is to refuse the application, the reasons for the refusal.

b. A statement that the applicant may request the review of the decision under Part 7 Division 2.

3.8.3 When a support payment is to be made

1. If an application for a support payment is made after the member's period of defence service has ended, any payment is to be made as soon as practicable after the application is approved.

2. If an application for a support payment is made before the member's period of defence service has ended, the payment is to be made at one of the following times:

    a. In the case of defence service other than continuous full-time service — as soon as practicable after the period of defence service has ended.

    b. In the case of continuous full time service — as soon as practicable for defence service which has been completed, then fortnightly in arrears for the remainder of the claimed period of defence service.

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Part 4: Extended support payments

Division 1: General

4.1.1 Overview

1. Extended support payments provide additional financial assistance to an applicant to whom a support payment is payable, in any of the following circumstances:

    a. The member concerned suffers an injury or illness that was caused by the member's defence service in the same claim period.

    b. The member concerned dies while on defence service in the same claim period.

2. This Part provides the following:

    a. How and when an application for an extended support payment is to be made.

    b. The rules for determining if an application for an extended support payment is payable.

    c. The maximum amount of extended support payment and when it must be paid.

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Division 2: Applying for extended support payment

4.2.1 How and when to apply

1. An applicant must use the approved form to apply for an extended support payment.

2. Any application for an extended support payment must be made as soon as reasonably practicable after the applicant becomes aware of any of the following:

    a. That the member has suffered an injury or illness that was caused by the member's defence service.

    b. That the member has died while on defence service.

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Division 3: Illness or injury of member

4.3.1 Member suffers illness or injury resulting from defence service

An applicant for an extended support payment to whom a support payment is payable in relation to a member's absence on defence service is eligible to be paid an extended support payment if the CDF is satisfied that all of the following are met:

a. The member has suffered an injury or illness resulting from the member's defence service.

b. The illness or injury could reasonably be expected to be accepted as a service injury or service disease in accordance with the definitions of those terms set out in the *Military Rehabilitation and Compensation Act 2004*.

c. The illness or injury prevents the member from any of the following:

i. Performing the full duties of their work for at least 5 days.

ii. Returning to work for at least 5 days.

4.3.2 Approval of extended support payment being made to an employer applicant

The CDF may approve an employer applicant being paid an extended support payment from the date of approval until the earliest of the following:

a. The member being able to return to full duties.

b. The member ceasing to receive all of the following for the injury or illness:

i. Medical treatment from Joint Health Command.

ii. Compensation payments from the Department of Veterans' Affairs.

c. The member's application for compensation being rejected, after any appeals are finalised, by the Department of Veterans' Affairs.

4.3.3 Approval of extended support payment being made to a member applicant

1. This section applies if all of the following are met:

a. The applicant is a member applicant.

b. The member has applied for compensation from the Department of Veterans' Affairs in relation to the illness or injury.

2. The CDF may approve the applicant being paid an extended support payment from the date of approval until the earliest of the following:

a. The member being able to return to full duties.

b. The Department of Veterans' Affairs accepting liability to compensate the member in relation to the injury or illness.

Note: This paragraph is not affected by the member choosing to accept, or not to accept, compensation payments from the Department of Veterans' Affairs.

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c. The member's application for compensation being rejected, after any appeals are finalised, by the Department of Veterans' Affairs.

4.3.4 Working out the amount of extended support payment

If an applicant is eligible for a support payment because of a member's absence on defence service and they are also eligible for an extended support payment under this Division, all of the following apply:

a. Defence service rendered by the member up to and including the date of injury or illness is treated in accordance with the provisions under Part 3 about the payment of a support payment.

b. If payment of an extended support payment does not cease under section 4.3.2 or section 4.3.3, all of the following apply:

   i. Payment for the injury or illness cannot exceed 52 weeks of a weekly support payment amount.

   II. The payment amount is inclusive of any support payments paid for defence service immediately prior to the date of the injury or illness under section 3.6.3.

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Division 4: Death of member

4.4.1 When can extended support payment be made in relation to a member who died

1. An applicant may apply for an extended support payment if the member dies while on defence service.

2. The death of the member has the following effects on eligibility:

    a. Defence service rendered by the member up to and including the date of death is treated in accordance with the normal provisions of this Determination.

    b. An extended support payment is payable for the 4-week period immediately following the member's death.

    c. No further amount is payable for the period after the date of death.

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Division 5: Finalising applications

4.5.1 Deciding on an application for extended support payment

1. After considering an application for an extended support payment, the CDF must do any of the following:

    a. Accept the application and work out the amount of extended support payment that is payable.

    b. Refuse the application.

2. If an application is made on behalf of a business that is related to the member concerned and has permanently ceased to operate or trade after the applicant has applied for an extended support payment, the CDF may do any of the following:

    a. Pay a portion of the application that is supported by substantiated evidence.

    b. Refuse the application.

4.5.2 Applicant must be given notice of decision on application

An applicant for an extended support payment must, within a reasonable time after the CDF makes a decision on the application, be given written notice of the decision including the following:

a. If the decision is to refuse the application, the reasons for the refusal.

b. A statement that the applicant may request the review of the decision under Part 7 Division 2.

4.5.3 When an extended support payment is to be made

The payment of an extended support payment is to be made at one of the following times:

a. If an application for an extended support payment is made after the claim period has lapsed — as soon as practicable.

b. If an application for an extended support payment is made before the end date of the claim period has lapsed — as soon as practicable for the elapsed period then fortnightly in arrears.

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Part 5: Additional support payments for financial loss

Division 1: General

5.1.1 Overview

1. Additional support payments provide additional financial assistance to applicants to whom a support payment is payable in relation to a member's absence on defence service if all of the following apply:

    a. The applicant's business has incurred a substantial financial loss as a result of the member's absence on defence service, or due to injury or illness resulting from the member's defence service.

    b. The amount otherwise payable in relation to a particular claim period payable under Part 3 or Part 4 is insufficient to cover that financial loss.

2. This Part provides the following:

    a. How and when an application for an additional support payment is to be made.

    b. The financial losses that can be recovered by applying for an additional support payment.

    c. The rules for determining if an additional support payment is payable.

    d. When an additional support payment is to be made.

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Division 2: Applying for additional support payment

5.2.1 How and when to apply

1. An applicant must use the approved form to apply for an additional support payment.

2. A single application form may be used to apply for an additional support payment for multiple claim periods in relation to a particular member.

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Division 3: When can additional support payment be made

5.3.1 Financial loss that can be recovered

1. For the purpose of this Part, ***relevant financial loss,*** in relation to an applicant, means a substantial financial loss that has been incurred by the applicant's business due to one of the following:

    a. The member's absence on defence service during the claim period.

    b. The member's absence from employment in the business, or from the business, due to injury or illness resulting from their defence service during the claim period.

2. The following losses suffered by the applicant are not a relevant financial loss for the purpose of this Part:

    a. A loss of a remote, speculative, or indirect kind.

    b. A loss of a personal nature or incurred in a personal capacity.

    c. A loss incurred otherwise than in the prudent and reasonable conduct of the business.

5.3.2 When can additional support payment be made

The CDF may approve an application for an additional support payment only if satisfied of all of the following:

a. The applicant is eligible for a support payment resulting from the absence on defence service of the member concerned during the claim period.

b. The applicant's business has incurred a relevant financial loss resulting from that absence.

c. One of the following apply:

    i. The applicant has made, or is making, a reasonable effort to avoid or limit the relevant financial loss.

    ii. It was not possible in the circumstances for the applicant to make arrangements to avoid the financial loss.

d. The following payments and allowances in total are not sufficient to avoid the relevant financial loss:

    i. The support payment ordinarily payable in relation to the claim period under Part 3.

    ii. Any extended support payment ordinarily payable in relation to the claim period under Part 4.

    iii. Any allowances the applicant has received, or is eligible to receive, under any other Determination made under section 58B of the *Defence Act 1903*.

5.3.3 Additional support payment not payable if legal officer sessional fee payable

An applicant is not eligible to be paid an additional support payment if a legal officer sessional fee was paid or is payable to the member for the same period of defence service.

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Division 4: Finalising applications

5.4.1 Deciding on an application for an additional support payment

1. After considering an application for an additional support payment, the CDF must do any of the following:

    a. Accept the application and work out the amount of additional support payment that is payable.

    b. Refuse the application.

2. An applicant for an additional support payment must, within a reasonable time after the CDF has made a decision on the application, be given written notice of the decision that includes the following:

    a. If the decision is to refuse the application, the reasons for the refusal.

    b. A statement that the applicant may request the review of the decision under Part 7 Division 2.

5.4.2 When any additional support payments are to be made

Any amount of additional support payment must be paid to the applicant as soon as possible after an application is approved.

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Part 6: Changes in circumstances

6.1.1 Purpose

This Part sets out an applicant's obligation to keep the CDF informed of certain changes in circumstances that are relevant to their eligibility for a support payment.

6.1.2 Applicants to whom this Part applies

This Part applies to an applicant to whom one of the following applies:

a. Their application has not been finally determined.

b. They have requested a review that has not been finally determined.

c. Their application, or a reviewable decision about their application, is the subject of a review initiated by the CDF under Part 7 Division 3 and that review has not been finally determined.

d. Their application for a support payment has been approved, but who has not been paid any or all of the approved support payment.

6.1.3 Applicant must notify certain changes

1. An applicant must notify the CDF in writing if any of the changes under subsection 2 has occurred since the applicant provided information when any of the following happened:

   a. The applicant made an application for a support payment.

   b. The applicant made a request for a review.

   c. The applicant provided any further information about an application or request for a review.

2. For the purpose of subsection 1 the applicant must notify any of the following changes:

   a. The member stops being employed by the applicant.

   b. If the member was employed by the applicant in part-time work when the application was made — the member starts working for the applicant full-time.

   c. If the member was employed by the applicant in full-time work when the application was made — the member starts working for the applicant part-time.

   d. The working hours of the member have changed significantly since the application was made.

   e. If the applicant is a partnership and the member is one of the partners of the partnership — the member stops being a partner.

   f. If the applicant is a company and the member is one of the directors of the company and is employed to manage the activities of the applicant's business — the member stops being a director or being so employed.

   g. If the applicant is a trust and the member is a beneficiary of the trust and is employed to manage the activities of the applicant's business — the member stops being so employed.

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h. The applicant's business ceases to be a registered business.

i. The applicant's business ceases to trade or operate on any basis, whether temporarily or permanently.

j. The applicant's business is disposed of.

k. The member will not be able to complete any period of defence service referred to in the application.

l. Any other change which may be relevant.

3. The applicant must notify the CDF in writing about the change as soon as practicable after it happens.

6.1.4 Support payment may be increased because of change in circumstances

1. This section applies if all of the following have occurred:

   a. An applicant is eligible for a support payment.

   b. The applicant has given notice of a change in circumstances.

   c. The change in circumstance would increase the support payment amount the applicant is eligible for.

2. The CDF may substitute a new decision in relation to a claim period that has ended, authorising a support payment to be made in relation to that period.

3. If the CDF substitutes a decision under this section, they must give the applicant written notice of the decision, including the reasons for substituting the decision.

6.1.5 Repayment if support payment is decreased because of change in circumstances

1. This section applies if all of the following have occurred:

   a. An applicant is eligible for a support payment.

   b. The applicant has given notice of a change in circumstances.

   c. One of the following applies because of the change in circumstances:

      i. The applicant is not eligible for a support payment.

      ii. The applicant is eligible for a lower support payment than the amount that was paid.

2. The CDF may substitute a new decision in relation to a past claim period, requiring the repayment of all or a specified part of a support payment.

3. If the CDF substitutes a decision under this section, they must give the applicant written notice of the decision including the reasons for substituting the decision.

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Part 7: Review of decisions

Division 1: General

7.1.1 Purpose

This Part sets out a procedure for an applicant who is dissatisfied with certain decisions to request the review of those decisions and the applications to which they relate.

7.1.2 Reviewable decisions

1. For the purpose of this Part, ***reviewable decision*** means any of the following decisions:

    a. A decision to refuse to deal with an application because it was not validly made.

    b. A decision to refuse an application.

    c. A decision about the amount of a support payment, extended support payment or additional support payment that is payable to an applicant.

    d. Any of the following decisions made after the conclusion of a review initiated by the CDF under Division 3:

        i. A decision to confirm the decision reviewed.

        ii. A decision that is substituted for the decision reviewed.

        iii. A decision authorising a support payment, extended support payment or additional support payment to be made after a decision is substituted.

        iv. A decision requiring the repayment of a support payment, extended support payment or additional support payment in relation to a past period.

2. The following decisions are not reviewable decisions for the purposes of this Part:

    a. Any of the following decisions made after the conclusion of a review requested by the applicant:

        i. A decision to confirm the decision reviewed.

        ii. A decision that is substituted for the decision reviewed.

        iii. A decision authorising a support payment, extended support payment or additional support payment to be made after the new decision is substituted.

        iv. A decision requiring the repayment of a support payment, extended support payment or additional support payment in relation to a past period.

        v. A decision that is being investigated, or has been investigated under the *Ombudsman Act 1976.*

        vi. A decision that is, or has been, the subject of an application for review to the Administrative Review Tribunal.

    b. A decision to refuse to deal with an application or with a request for review under Division 2 because it was not made on time.

    c. A decision to refuse to act on a recommendation about approving a capability payment rate.

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d. A decision to approve a capability payment rate.

e. A decision to change or revoke a capability payment rate.

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Division 2: Applicant may request a review

7.2.1 Applicant may request a review

An applicant who is not satisfied with a reviewable decision can request the review of the decision, and the application to which it relates.

7.2.2 How to request a review

1. A request for a review under this Division must meet all of the following:

    a. It must be made in the approved form.

    b. It must set out the grounds for requesting the review.

    c. It must be made within 30 days after notice of the relevant reviewable decision is received by the applicant.

2. Despite paragraph 1.c, the CDF may accept a request for a review after 30 days if satisfied that exceptional circumstances justify doing so.

7.2.3 Decision made after review

After concluding the review of a decision under this Division, the CDF must do one of the following:

a. Confirm the decision.

b. Substitute a new decision, which can include any of the following:

    i. An authorisation for a support payment, extended support payment or additional support payment to be made after the new decision is substituted.

    ii. A requirement for the repayment of a support payment, extended support payment or additional support payment in relation to a past period.

7.2.4 Notice of review outcome

The CDF must give the applicant who requested a review under this Division written notice of any decision made after concluding the review and include all of the following:

a. The reasons for the decision.

b. A statement that the applicant may apply to the Ombudsman to investigate the administration of the decision made.

7.2.5 Operation of decisions subject to review

1. A reviewable decision that is subject to a review under this Division continues to operate during the review.

2. A reviewable decision substituted by the CDF after concluding a review under this Division has effect from one of the following dates:

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a. If a date is specified in the notice of the decision — that date, which must not be earlier than the date on which the decision the subject of the review was made.

b. If no date is specified in that notice — the date on which the decision the subject of the review was made.

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Division 3: CDF-initiated review

7.3.1 CDF-initiated review

1. The CDF may initiate a review of a reviewable decision, and the application or request for review to which it relates, for any of the following reasons:

    a. If the CDF suspects that the reviewable decision may not have been made in accordance with this Determination.

    b. If the CDF suspects that a different decision would have been made had additional information been available when the application concerned was made.

2. Without limiting the reasons that the CDF may form such a suspicion, the suspicion may be formed as a result of any of the following:

    a. Receiving notice of a change in circumstance of the applicant concerned under section 6.1.3.

    b. Otherwise becoming aware of a change in circumstances of the type listed in subsection 6.1.3.2.

7.3.2 Time limit on review

A review under this Division must begin within 12 months after the earlier of the following dates:

a. The date when the reviewable decision concerned was made.

b. The date when the reviewable decision concerned was taken to have effect under subsection 7.2.5.2.

7.3.3 CDF must notify applicant of review

If a review is initiated under this Division, the CDF must notify the applicant and provide an opportunity for the applicant to make a submission about the review.

7.3.4 CDF may require further information

1. If the CDF conducts a review under this Division, they may ask the applicant to provide further information about the application, reviewable decision or substituted decision concerned.

2. The request must be in writing and must include all of the following:

    a. Details of the information required.

    b. The date before which the information is required, which must be at least 30 days after the request is received by the applicant.

7.3.5 Decision made after review

If the CDF considers that the reviewable decision was not made in accordance with this Determination, they may substitute the decision with a new decision, which may involve one of the following:

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a. Authorising a support payment, extended support payment or additional support payment to be made.

b. Requiring the repayment of a specified amount in relation to a past period.

7.3.6 Notice of review outcome

The CDF must give the applicant written notice of any decision made after concluding the review, which must include all of the following:

a. The reasons for the decision.

b. A statement that the applicant may do one of the following:

i. Apply for a review of the decision under Division 2.

ii. Apply for a review of the decision to the Administrative Review Tribunal.

c. A statement that the applicant may apply to the Ombudsman to investigate the administration of the decision made.

7.3.7 Operation of decisions subject to review

1. A reviewable decision that is subject to a review under this Division continues to operate during the review.

2. A reviewable decision substituted by the CDF after concluding a review has effect from one of the following dates:

a. If a date is specified in the notice of the decision — that date, which must not be earlier than the date on which the decision the subject of the review was made.

b. If no date is specified in that notice — the date on which the decision the subject of the review was made.

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Division 4: Administrative Review Tribunal right to review

7.4.1 Review of decisions

1. The Administrative Review Tribunal may review a decision made under section 7.3.5 of this Determination if an applicant applies for the review of the decision.

2. The Administrative Review Tribunal cannot review a decision in any the following circumstances:

    a. The decision is being, or has been, reviewed under Division 2.

    b. The decision is being, or has been, investigated by the Ombudsman, including a decision not to investigate.

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Part 8: Miscellaneous

8.1.1 Purpose

This Part deals with the following miscellaneous matters:

a. It creates an obligation on applicants who provide information about applications and reviews to ensure that the information is accurate.

b. It authorises the collection, use and disclosure of personal information and sensitive information.

c. It provides for the CDF to authorise persons to exercise the CDF's decision making powers or functions under this Determination on the CDF's behalf.

8.1.2 Obligation to provide accurate information

An applicant must provide accurate information in or in connection with an application, including in all of the following circumstances:

a. In an application.

b. In any request for a review.

c. In compliance or purported compliance with a request for further information made under any of the following:

i. Section 3.3.2, Information that must be provided – employer applicant.

ii. Section 3.4.4, Information that must be provided – member applicant.

iii. Section 7.3.4, CDF may require further information.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents. The *Criminal Code* is a Schedule to the *Criminal Code Act 1995*.

8.1.3 Collection, use and disclosure of personal information

1. For the purpose of the Australian Privacy Principles, as provided in Schedule 1 to the *Privacy Act 1988*, the Department of Defence is authorised to collect, use and disclose personal information and sensitive information necessary or required for the administration of payments under this Determination.

2. For the purpose of clarity, the administration of payments includes, but is not limited to, the following:

a. Making a support payment, extended support payment or additional support payment.

b. Reviewing decisions made with respect to a support payment, extended support payment or additional support payment.

c. Providing advice about the availability of a support payment, extended support payment or additional support payment.

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3. For the purpose of the Australian Privacy Principle 8, as provided in Schedule 1 to the *Privacy Act 1988*, the Department of Defence is authorised to disclose personal information to an overseas recipient (within the meaning of that Act) as necessary or required for the administration of payments made to an applicant under this Determination.

8.1.4 CDF may authorise persons to exercise certain powers or functions

1. The CDF may authorise persons to exercise, from time-to-time, the CDF's decision-making powers or functions under this Determination on the CDF's behalf.

2. Despite subsection 1, the CDF may not authorise a person to exercise the following powers:

    a. The power to authorise persons to exercise powers or functions under Part 3 Division 7.

    b. The power to authorise persons to exercise powers or functions under this section.

3. The CDF may give written directions about how a person authorised under this section is to exercise any of their powers or functions.

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Schedule 2 — Savings and transitional provisions

1 Definitions

The following definitions apply to this Schedule:

Former Determination means the *Defence Determination 2012/68, Reserve employer support payments*, as in force immediately before 1 July 2023.

New Determination means the *Defence (Employer Support Payment Scheme) Determination 2023*, which commences on 1 July 2023.

2 Determination applies to defence service rendered on or after 1 July 2023

Except as provided by this Schedule, the new Determination applies only to applications to which both the following circumstances apply:

a. The application is made on or after 1 July 2023.

b. The application relates to a period of defence service that starts on or after 1 July 2023.

3 Review of decisions made under the former determination before 1 July 2023

The former Determination continues to apply, as if it had not been repealed, to and in respect of the review of any decision made under the former Determination before 1 July 2023, whether the application for review is made before or after that date.

4 Applications under the former determination that were pending on 1 July 2023

1. The former Determination continues to apply, as if it had not been repealed, to and in respect of the following:

    a. An application made under the former Determination before 1 July 2023 that was not finally determined before 1 July 2023.

    b. The review of any decision made in respect of any such application, whether the decision was made before, on or after 1 July 2023.

2. Despite subsection 1, the limits on the amount of a payment set out in Part 3 Division 6, and section 5.4.2, of the new Determination apply to any payments under the application that may relate to a period of defence service which is completed on or after 1 July 2023.

5 Applications that apply to defence service completed before 1 July 2023

The former Determination continues to apply, as if it had not been repealed, to and in respect of the following:

a. An application that relates to defence service rendered by a member that was completed before 1 July 2023, whether the application is made before or after that date.

b. The review of any decision made in respect of any such application.

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6 Applications that relate to defence service commenced before 1 July 2023 but completed on or after that date

1. This section applies to an application that relates to a period of defence service that commenced before 1 July 2023 and continues on or after 1 July 2023.

2. The former Determination continues to apply, as if it had not been repealed, to and in respect of the following:

    a. That part of a period of defence service that occurred before 1 July 2023.

    b. The review of any decision made in respect of that part of the period of defence service.

3. The new Determination applies to and in respect of the following:

    a. That part of a period of defence service that occurred on or after 1 July 2023.

    b. The review of any decision made in respect of that part of the period of defence service.

4. Despite subsection 2, the limits on the amount of a payment set out in Part 3 Division 6 of the new Determination apply to any payments under the application that may relate to a period of defence service which is completed on or after 1 July 2023.

7 Evidence that applicant is member's principal source of income or principal source of employment

1. This section applies to a member applicant if the following are met:

    a. The applicant established under the former Determination that it was the member's principal source of income or principal source of employment.

    b. The applicant was, under the former Determination, permitted to rely on that evidence for future claims for a specified period.

    c. That specified 2 year period had not ended before 1 July 2023.

2. If an applicant makes an application under the new Determination, the applicant is taken to satisfy paragraph 3.4.1.e of the new Determination in relation to a claim relating to an absence on defence service by the member concerned that commences on or after 1 July 2023 and is completed on or before the day that the period referred to in paragraph 1.a ends.

3. If the applicant's business was determined to be principal source of employment of the member concerned under the former Determination, the maximum 2-year limit to establish the applicant's eligibility under subsection 3.4.3.3 of the new Determination is considered to have been met.

8 Operation of limit on eligibility relating to continuous full-time service

Section 3.6.4 of the new Determination extends to continuous full-time service that occurred before the commencement of the new Determination.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Defence (Employer Support Payment Scheme) Determination 2023	21 April 2023 F2023L00457	1 July 2023	Schedule 2
Defence (Employer Support Payment Scheme) Amendment Determination 2024 (No. 1)	23 October 2024 F2024L01351	24 October 2024	

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Endnote 4—Amendment history

Provision affected	How affected
1.1.2	rep: LA s 48D.
2.1.2	am: F2024L01351.
3.4.3	am: F2024L01351.
3.6.4	am: F2024L01351.
3.7.2	am: F2024L01351.
3.7.3	am: F2024L01351.
3.7.4	am: F2024L01351.
7.1.2	am: F2024L01351.
7.3.6	am: F2024L01351.
Division 4 of Part 7 Heading	am: F2024L01351.
7.4.1	am: F2024L01351.
Schedule 1	rep: LA s 48C.

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